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DIMITRITZA TOROMANOVA

2912 Hot Cider Ave.
 Las Vegas, NV 89031
 (702) 702-797641

**UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEVADA**

DIMITRITZA TOROMANOVA, an individual

Plaintiff,

vs.

WELLS FARGO BANK, N.A.; WACHOVIA
 MORTGAGE, FSB; NATIONAL DEFAULT
 SERVICING CORP; and DOES 1-10, I Inclusive,

Defendants.

Case No.: 2:12-cv-00328-
 GMN-CWH

Jury Trial Requested

Date:
 Time:
 Courtroom:

**OPPOSITION TO DEFENDANT NATIONAL DEFAULT SERVICING JOINDER TO
 WELLS FARGO BANK MOTION TO DISMISS**

Plaintiff, DIMITRITZA TOROMANOVA ("Plaintiff"), hereby files an Opposition to
 Defendants National Default Servicing Corp., ("National") Joinder to Wells Fargo Bank, NA's
 ("Wells") Motion to Dismiss, ("MTD").

National's Joinder is an attempt to cloud the fact that it has failed to file a timely
 response to Plaintiff's Complaint.

National Joinder to Wells MTD is not a true Joinder in motion as it contains additional
 substantive arguments. If National wanted to raise further substantive arguments relating to
 Plaintiff's Complaint, it should have filed its own motion to dismiss.

1 **However, the time for National to file its own motion has passed so it files a**
2 **Joinder to Wells motion. Unfortunately, the Joinder is also untimely since it was filed**
3 **after the time allowed for responsive pleadings.**

4 Affidavit of Service was filed with the court 2/23/12

5 Wells filed their Amended Petition for Removal to Federal Court 3/1/12

6 **Wells filed their Motion to Dismiss 3/7/12**

7 **National did not file its Joinder to the above motion until 3/20/12**

8 National attempted Joinder was untimely filed and served and should be denied.

9 See, e.g., *Liveops, Inc. v. Teleo, Inc.*, 2006 WL 83058 at n.2 (N.D. Cal. January 9, 2006)

10 Fed Rules of C.P. Rule 81 (c) Removed Actions.

11 (1) Applicability.

12 These rules apply to a civil action after it is removed from a state court.

13 (2) Further Pleading.

14 After removal, repleading is unnecessary unless the court orders it. **A defendant who did**
15 **not answer before removal must answer or present other defenses or objections under**
16 **these rules within the longest of these periods:**

17 **(A) 21 days after receiving — through service or otherwise — a copy of the initial**
18 **pleading stating the claim for relief;**

19 **(B) 21 days after being served with the summons for an initial pleading on file at the**
20 **time of service; or**

21 **(C) 7 days after the notice of removal is filed. “**

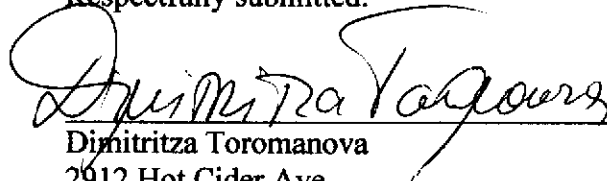
22 National failed to meet any of the above deadlines. Undue delay in making a joinder
23 motion can properly be counted against the moving party as a reason for denying the motion.
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2 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 3 1. This Court denies the Joinder filed by National as untimely;
- 4 2. Federal Rule 55(a), the phrase "plead or otherwise defend" is interpreted
- 5 disjunctively so that entry of default is inappropriate where the defendant has *either* properly
- 6 plead *or* otherwise defended.
- 7 3. Since National failed to timely plead or defend, this Court should enter a Default
- 8 Judgment against National as to liabilities and damages and grants Plaintiff court costs;
- 9 4. For such other and further relief as the Court deem just and proper.
- 10
- 11

12 DATED this 28 day of March, 2012

13 Respectfully submitted:

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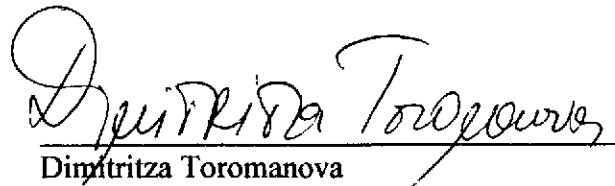
15 Dimitritza Toromanova
16 2912 Hot Cider Ave.
17 Las Vegas, NV 89031
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CERTIFICATE OF SERVICE

I hereby certify that on this 28 day of March, 2012, I mailed a true and correct copy of the foregoing **OPPOSITION TO DEFENDANT NATIONAL DEFAULT SERVICING JOINER TO WELLS FARGO BANK MOTION TO DISMISS** to counsel of record for Defendants, by placing same in the United States Mail, postage prepaid in Las Vegas, Nevada, properly addressed as follows:

Gregory L. Wilde, Esq,
TIFFANY & BOSCO, P.A.
212 S. Jones Blvd.
Las Vegas, NV 89107

DAVID J. MERRILL, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145


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